IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1855 OF 2002

Premchand Gupta .. Petitioner
V/s
Union of India & Ors. .. Respondents

Mr.G.S.Walia i/by Mr.R.G.Walia for the Petitioner.
Mr.T.J.Pandian for Respondent Nos.1 to 4.

CORAM: F.I.REBELLO, &
S.P.KUKDAY, JJ.

DATE : 22.03.2005.

P.C.:

1. Rule. Heard forthwith.

2. Petitioner was the applicant in O.A.No.39 of 1993. He was one of those eligible for consideration for promotion to the post of Foreman Grade ‘B’. He had passed written test. At the relevant time he was holding the post of Foreman Grade B on ad-hoc basis.

3. In paragraph No.4.9 of O.A. a specific grievance was made by the Petitioner that the Respondents had clubbed the vacancies of seven years and held a common selection. It was his cntention that the vacancies have to be considered for the year in which they arose and accodingly the selection has to be done based on the vacancy for that year. That was not done. Instead, all the vacancies were clubbed together thereby extending the zone. This specific averment in para 4.9 was not denied by the Respondents. The learned Tribunal inspite

of no denial has proceeded on the footing that the Petitioner before this court had not produced any material in support of his allegation. The number of vacancies and the year in which they arose, would be to the exclusive knowledge of the Respondents. All that the Petitioner could aver was that the vacancies had been clubbed together considering the span of seven years. It was for the Respondents thereafter to disclose by way of reply the factual position. This, the Respondents have not done.

4. Another contention urged on behalf of the Petitioner is that as he was working as Foreman Grade B on ad-hoc basis, for the purpose of his promotion he should have been graded higher than the grade given to him in his C.R. This is based on the full bench judgment of the CAT. Subsequently, it has been affirmed by two judgments of the Apex Court. This aspect has also not been considered.

5. Considering the above, in our opinion, the ends of justice would met if the imugned order so for as the Petitioner is concerned, is set aside and the matter is remanded back to the Tribunal for denovo consideration in all the aspects of the matter. Tribunal to dispose of the same within a period of four weeks from today.

6. We are conscious of the fact that the Petitioner had earlier in his O.A.joined the parties likely to be

affected, but in the present petition, has not joined them. At the highest all that we can say that those persons who are not made parties to this petition, consequent to the order of remand their promotions need not be upset. The petitioners, on denovo consideration, if there were vacancies for that year, to be considered to be given promotion against those vacant posts.

7. Rule is made absolute accordingly. No order as to costs.

(F.I.REBELLO, J.)

(S.P.KUKDAY, J.)